Supreme Court, U.S.
FILED
JUN 20 1990
JOSEPH F. SPANIOL, JR.
CLERK

(4)

No. 89-1617

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1989

WESLEY P. BERNARD, et al.,
Petitioners,

v.

GULF OIL CORPORATION, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITIONERS' SUPPLEMENTAL BRIEF

JULIUS LeVONNE CHAMBERS
JUDITH REED
ERIC SCHNAPPER*
NAACP Legal Defense &
Educational Fund, Inc.
99 Hudson Street,
16th Floor
New York, N.Y. 10013
(212) 219-1900

ULYSSES GENE THIBODEAUX
NEWMAN & THIBODEAUX
1925 Enterprise Boulevard
Lake Charles, LA 70601
(318) 439-1060

BEST AVAILABLE COPY

STELLA MARIE MORRISON
1015 East Gulfway Drive
Port Arthur, TX 77640
(409) 985-9358

Counsel for Petitioners

*Attorney of Record

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
ARGUMENT	1
CONCLUSION	2

TABLE OF AUTHORITIES

Case	Page
Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115 (1989)	2-3
Legislative Authorities	
S. 2104, 101st Cong., 2nd Sess. (1990)	2
H.R. 4000, 101st Cong., 2nd Sess. (1990)	2

No. 89-1617

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

WESLEY P. BERNARD, et al.,
Petitioners,

v.

GULF OIL CORPORATION, et al.
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITIONERS' SUPPLEMENTAL BRIEF

ARGUMENT

The decision of the court of appeals below was premised in large measure on the law announced in Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115 (1989). Respondents argue that Wards Cove mandated a decision in their favor because "the

standard . . . applied in Wards Cove . . . was the rejection of . . . those cases which had applied the strict 'business necessity' standard." (R. Br. 7).[1] Respondents also emphasized that Wards Cove changed the burden of proof, exempting them from any obligation to prove that their tests satisfied even the new Wards Cove substantive standard. (R. Br. 8).

Since the certiorari petition in this case was filed, committees of both the Senate and House of Representatives have approved legislation overturning this Court's decision in Wards Cove. (S. 2104; HR 4000). Section 4 of both bills would expressly reestablish a "business

---

1 See also id. at 6 (court below properly refused to apply pre-Wards Cove standard requiring test be "necessary to business goals of safety and efficiency"; "Judge Reavley opted to apply [a less stringent] standard rather than the business necessity standard.")

necessity" standard, and both bills would specifically return to employers the burden of proof as to business necessity. The full Senate is expected to begin momentarily consideration of this legislation. We have lodged with the clerk copies of the House and Senate bills, as reported by the respective committees, and of the Senate committee report. Under these circumstances we suggest that the Court defer action in this petition until the beginning of the next term.

Conclusion

The Court should defer action on this petition until October Term, 1990.

Respectfully Submitted,

JULIUS LeVONNE CHAMBERS
JUDITH REED
ERIC SCHNAPPER*
NAACP Legal Defense &
Educational Fund, Inc.
99 Hudson Street,
16th Floor
New York, N.Y. 10013
(212) 219-1900

ULYSSES GENE THIBODEAU
NEWMAN & THIBODEAUX
1925 Enterprise Boulevard
Lake Charles, LA 70601
(318) 439-1060

STELLA MARIE MORRISON
1015 East Gulfway Drive
Port Arthur, TX 77640
(409) 985-9358

Counsel for Petitioners

*Attorney of Record